

From: Garcia, Della W CIV USN BUMED FCH VA (US)
To: (b) (6) CTR OPNAV DNS-36
Subject: FW: [Non-DoD Source] FOIA DON 18-O - Walter Reed FY 2012 Annual FOIA Report Submission as received by BUMED
Date: Tuesday, December 19, 2017 7:41:31
Attachments: DON 18-O BUMED- WRNMMC Unredacted FOIA Report with enclosures.pdf

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-----Original Message-----

From: (b) (6) @aol com [mailto:(b) (6) @aol com]
Sent: Sunday, November 26, 2017 8:58 AM
To: Garcia, Della W CIV USN BUMED FCH VA (US); (b) (6) @mail mil; Garcia, Della W CIV USN BUMED FCH VA (US)
Subject: [Non-DoD Source] FOIA DON 18-O - Walter Reed FY 2012 Annual FOIA Report Submission as received by BUMED

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RobertHammond
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November 26, 2017
FOIA OFFICER
DEPARTMENT OF THE NAVY
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Subject: FOIA Request - Walter Reed FY 2012 Annual FOIA Report Submission as received by BUMED

Requester Personal Reference Number: FOIA DON 18-O

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<Caution-file:///C:/Users/Bob/AppData/Local/Temp/mshtmlclip1/01/clip_image001.png> (a) The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended,
(b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, "Your Right to Federal Records"
(c) The Privacy Act ("PA") of 1974, 5 U.S.C. § 552a, et seq., as amended (d) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program
(e) DoD 5400 7-R, September 1998, DoD Freedom of Information Act (FOIA) Program (f) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Regulation
(g) DoD 6025 18-R, Jan 24, 2003, DoD Health Information Privacy Regulation
(i) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
(j) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Dear Ms. Garcia:

This is a FOIA request, not an appeal

This Request will be ripe for judicial review in twenty working days

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited above apply.

RECORDS SOUGHT VIA FOIA

I am respectfully seeking all records in NAVSEA's possession related to:

- a. An unredacted copy of Walter Reed's FY 2012 Annual FOIA Report submission records as received by BUMED, to include the forwarding correspondence thereof. Please see Enclosure A.
- b. Not that the email addresses of Della Garcia (BUMED) and Judy Bizzell (Walter Reed (WRNMMC)) have been released into the public domain countless times with regard to their FOIA duties. See Enclosure B.
- c. Also, there is no privacy exemption with regard to public employees in their official capacities.
2. Records indicating how BUMED reported my FOIA Request at Enclosure A in BUMED's FY 2014 and subsequent FOIA Reports via BUMED's Reporting Chain.
3. I am also requesting that a copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request.

Requested Format: I am respectfully requesting that documents be provided as a single PDF file by return email.

Agreement to Pay Fees I agree to pay fees for searching or copying the records up to \$150. If the fees exceed this amount, please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requests seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee.

PUBLIC INTEREST The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest in Privacy Act reporting to Congress.

PRESERVATION OF RECORDS AND SEARCHES PERFORMED Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof.

Civilian Employees Information Specifically Authorized for Release

The following information is specifically authorized for release under the Department of Defense Privacy Program by reference (b) and is not exempt under FOIA exemption (b)(6):

DoD 5400 11-R, May 14, 2007, DoD Privacy Act Program:

C4 CHAPTER 4

DISCLOSURE OF PERSONAL INFORMATION TO OTHER AGENCIES AND THIRD PARTIES C4 1 CONDITIONS OF DISCLOSURE [Intervening text omitted]

C4 2 NON-CONSENSUAL CONDITIONS OF DISCLOSURES [Intervening text omitted] C4 2 2 Disclosures Required by FOIA C4 2 2 1 All records must be disclosed if their release is required by Reference (p), as implemented by Reference (d). The FOIA requires that records be made available to the public unless withholding is authorized pursuant to one of nine exemptions or one of three law enforcement exclusions under the Act.

[Intervening text omitted]

C4 2 2 5 1 DoD Civilian Employees

C4 2 2 5 1 1 Some examples of personal information regarding DoD civilian employees that normally may be released without a clearly unwarranted invasion of personal privacy include:

C4 2 2 5 1 1 1 Name

C4 2 2 5 1 1 2 Present and past position titles

C4 2 2 5 1 1 3 Present and past grades

C4 2 2 5 1 1 4 Present and past annual salary rates

C4 2 2 5 1 1 5 Present and past duty stations

C4 2 2 5 1 1 6 Office and duty telephone numbers

C4 2 2 5 1 1 7 Position Descriptions

C4 2 2 5 1 2 All disclosures of personal information regarding Federal civilian employees shall be made in accordance with OPM release policies.

LEGAL FRAMEWORK OF FOIA

1 The definition of "records" includes:

"[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." 44 U.S.C. § 3301 (emphasis supplied)

2 FOIA requires that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A)

3 FOIA requires that "each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request." 5 U.S.C. § 522(a)(7)(A)

4 FOIA requires that each agency shall "establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request." 5 U.S.C. § 522(a)(7)(B)

5 FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii)

6 FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I)-(ii). See also 5 U.S.C. § 552(a)(6)(C)

7 FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8 Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981).

9 Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B)

10 Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E)

11 Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, "Disposition of FOIA Requests," (available at

Caution-http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf

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Caution-http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf

>) ("DOJ Handbook")

12 Among other things, the DOJ Handbook states, "All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured."

13 The DOJ Handbook also states:

"[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance." DOJ Handbook, at 3

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

Robert Hammond

